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CHARLES ELMORE CROPL
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No. 134

IN THE

SUPREME COURT OF THE UNITED STATES.

THE GOODYEAR TIRE & RUBBER COMPANY, INC.,
Petitioner,

vs.

JAMES TIERNEY, RUSSELL SMITH, BEN EMGE, GEORGE HALPIN, JOHN J. KEELEY, Members, and JOHN J. COSTELLO, Chief Clerk of the St. Clair County Board of Assessors; HERBERT SCHWIND, E. A. CUNNINGHAM and JOHN B. SIMONDS, Members of the St. Clair County Board of Review; MORRISON C. TREESH, Former Town Collector for Canteen Township; LARRY RECKLEIN, Present Town Collector for Canteen Township, and CHARLES J. SCHMULBACH, County Collector for St. Clair County,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

Petitioner, Goodyear Tire & Rubber Company, Inc., hereinafter referred to as Goodyear, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Illinois entered in the above entitled case on March 17, 1952.

OPINION BELOW.

The opinion of the Supreme Court of Illinois is reported in 411 Ill. 421, 104 N. E. 2d 222.

JURISDICTION.

The opinion of the Supreme Court of Illinois in this case was handed down on January 24, 1952 (R.19..),[1] and thereafter on March 17, 1952, Goodyear's petition for a rehearing was overruled (R.31..). The jurisdiction of this court is invoked under 28 U. S. C., Sec. 1257 (3) (June 25, 1948, c. 646, 62 Stat. 929, and 28 U. S. C., Sec. 2101 (1) (June 25, 1948, c. 646, 62 Stat. 961).

QUESTION PRESENTED.

Where land owned by the United States of America is occupied by a private corporation as a tenant at will, may the state in which that land is located assess the entire value of the freehold against that private corporation and tax that corporation on the entire value so assessed, without depriving the corporation of due process of law under the Fourteenth Amendment?

STATUTES INVOLVED.

The statutes involved in this case are **Smith-Hurd Ann. Stat.**, Ch. 120, Sec. 507 and **Smith-Hurd Ann. Stat.**, Ch. 120, Sec. 501 (2). Smith-Hurd Ann. Stat., Ch. 120, Sec. 507, reads as follows:

> "When real estate which is exempt from taxation is leased to another whose property is not exempt, and the leasing of which does not make the real estate taxable, the leasehold estate and the appurtenances shall be listed as the property of the lessee thereof, or his assignee, as real estate."

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1 "R." refers to the record printed by the clerk of this court and "Abstr. of Record" refers to the record filed in the Supreme Court of Illinois.

Smith-Hurd Ann. Stat., Ch. 120, Sec. 501, reads in part, as follows:

> "(2) Each taxable leasehold estate shall be valued at its fair cash value, estimated at the price it would bring at a fair, voluntary sale."

STATEMENT.

On or about February 1, 1947, petitioner, Goodyear Tire & Rubber Company, Inc., hereinafter called Goodyear, entered into possession and occupancy of certain improved real estate located in St. Clair County, Illinois, which was owned by the United States of America (Abstr. of Record, p. 3).

Goodyear occupied the premises under an "interim permit" from the United States and was at most a tenant at will. The permit contemplated that Goodyear and the United States would execute a lease at some future date. It provided for an annual rental of $79,095.70 and granted Goodyear an option to purchase for $829,729.50 (Abstr. of Record, pp. 14-15). However, the contemplated lease was never executed and Goodyear surrendered possession of the premises on July 31, 1948 (Abstr. of Record, p. 13).

The Board of Assessors of St. Clair County, Illinois, at a meeting with a representative of Goodyear took the position that the occupancy of said property of the United States of America by Goodyear made the property taxable to Goodyear and that the value of the entire freehold interest—the interest of both Goodyear and the United States of America—was taxable to Goodyear (Abstr. of Record, pp. 4, 7, 10-13). Accordingly, the freehold was assessed in the name of Goodyear and the assessment was $884,940 in 1947 and $915,470 in 1948 (Abstr. of Record, p. 3). Based on these assessments a tax bill for $24,265.14 was sent to

Goodyear for 1947 and a tax bill for $27,324.14 was sent for 1948 (Abstr. of Record, p. 4).

Goodyear instituted this action for a declaratory judgment alleging in its petition that the assessments were void:

> "* * * and any attempt to collect these taxes will be an attempt to take the petitioner's property without due process of law in violation of Article 2, Section 2 of the * * * Fourteenth Amendment of the Constitution of the United States" (Abstr. of Record, p. 4).

Goodyear's petition for a declaratory judgment was dismissed by the trial court on the ground that "plaintiff had not exhausted all of its statutory legal remedies" (Abstr. of Record, p. 9).

In both the trial court and this court plaintiff contended that it need not exhaust its statutory remedies because such remedies need not be exhausted in any case where the tax is on property exempt from taxation—in this case the freehold interest of the United States of America which was taxed in its entirety to Goodyear. Rejecting this contention the court said:

> "* * * An assessment to appellant based on the value of the freehold could be said to be an erroneous and excessive assessment but it is not tantamount to an attempt to tax exempt property. The property was exempt from taxation only in the hands of the United States Government and not in the hands of the lessees. However erroneous the action of the assessors may have been in assessing the interest of the Goodyear Company by valuing it at the full value of the fee any objection to their action goes only to the amount of the assessment and affords appellant no basis for a claim to exemption" (R2 5., 104 N. E. 2d 225).

In basing its decision on this ground the Supreme Court of Illinois ignored the constitutional question raised by Goodyear and stated as follows in its brief filed with that court:

> "If Smith-Hurd Ann. Stat., Ch. 120, Secs. 507 and 501 (2), are construed so as to make the value of the freehold taxable to plaintiff they would violate the Fourteenth Amendment of the United States Constitution * * *." (Appellant's Brief, p. 13.) [Certified as part of record but by stipulation not printed.]

The constitutional question was again urged by Goodyear in its motion for rehearing in the following language:

> "To tax a Lessee of Real Estate owned by the United States on the Value of the Freehold Interest Violates the 14th Amendment of the United States Constitution." (Motion for Rehearing, p. 7, Certified as part of record but not printed by stipulation.)

SPECIFICATION OF ERRORS TO BE URGED.

The Supreme Court of Illinois erred:

1. In refusing and failing to hold that the Board of Assessors of St. Clair County, Illinois, in assessing the entire value of the freehold of land owned by the United States of America and occupied by Goodyear, a private corporation, as a tenant-at-will, against Goodyear, deprived Goodyear of due process of law under the Fourteenth Amendment of the Constitution of the United States.

2. In denying Goodyear's constitutional rights by basing its opinion on the non-Federal ground of decision that Goodyear had failed to exhaust its statutory remedies which ground is without any substantial basis.

REASONS FOR GRANTING THE WRIT.

The decision of the Supreme Court of Illinois in this case is not in accord with the applicable decisions of this Court. It is in direct conflict with, among others, the decisions of this Court in **United States v. County of Allegheny,** 322 U. S. 174, 88 L. Ed. 1209, 64 S. Ct. 908 (1944) and **Van Bocklin v. Anderson,** 117 U. S. 151, 49 L. Ed. 845, 6 S. Ct. 670 (1886).

The assessment in this case could properly have been only levied against Goodyear's interest in the property in question. It could not have lawfully been on the freehold interest of the United States of America—an interest exempt from taxation.

United States v. County of Allegheny, supra, is squarely in point. In that case Pennsylvania had levied a tax on the Mesta Machine Company plant based on its value as increased by machinery owned by the United States and leased to the company for the manufacture of guns for the Army. The taxing authorities and the Supreme Court of Pennsylvania held that the tax was on the interest of Mesta and was not a tax on the exempt property of the United States of America in the following language (l. c. 1216):

> "• • • It acknowledged that property held by the United States is 'beyond the pale of taxation' by a state, but this assessment, it said, is not against the United States but against Mesta, which is operating its mill for private purposes. If Mesta defaulted in tax payments, the court held that the 'paramount rights of the Government in the machinery could not be divested or in any way affected' hence the Government could suffer no loss."

This Court, while indicating that Mesta's interest might have been taxable as such, held that the tax in question was a tax on property owned by the United States and which was therefore exempt from taxation. This Court said (l. c. 218):

> "**We hold that the substance of this procedure is to lay an ad valorem general property tax on property owned by the United States.**" (Emphasis supplied.)

This Court also said (l. c. 1219):

> "Mesta has some legal and beneficial interest in this property. It is a bailee for mutual benefit. Whether such a right of possession and use in view of all the circumstances could be taxed by appropriate proceedings we do not decide. Its leasehold interest is subject to some qualification of the right to use the property except for gun manufacture, is limited to the period it engages in such work, and is perhaps burdened by other contractual conditions. * * * But that is not the situation here, and **the State has made no effort to segregate Mesta's interest and tax it.** The full value of the property, including the whole ownership interest, as well as whatever value proper appraisal might attribute to the leasehold was included in Mesta's assessment." (Emphasis supplied.)

Van Bocklin v. Anderson, 117 U. S. 151, 29 L. Ed. 845, 6 S. Ct. 670 (1886), is likewise squarely in point. In that case the United States had purchased certain land at a tax sale which land was thereafter redeemed by the former owner. The state contended that the former owner was liable for tax during the years the United States held title to the property. This Court said (l. c. 180):

> "The question whether the taxes laid under authority of the State can be collected in this suit depends upon the question whether they were lawfully as-

sessed. But all the assessments were unlawful, because made while the land was owned by the United States. The assessments, being unlawful, created no lien upon the land. Those taxes, therefore, cannot be collected, even since the plaintiffs in error have redeemed or purchased the land from the United States."

The effect of the court's decision in this case is to ignore the Federal question involved and thereby deprive Goodyear of its constitutional rights. Clearly the assessment in question violates the Constitution of the United States and the opinion of the Supreme Court of Illinois is in direct conflict with the cases heretofore referred to.

Although the Illinois court chose to base its opinion on a non-Federal ground, this court has the right and is under the duty to ignore the decision on a purported non-Federal ground, that ground being without fair or substantial support.

In **Postal Telegraph-Cable Company v. City of Newport,** 247 U. S. 464, 62 L. Ed. 1215, 38 S. Ct. 566 (1918), the applicable rule was stated by the Supreme Court of the United States in the following language (l. c. 475):

> "Res judicata, like other matters of estoppel, ordinarily is a matter of state law, and as the decision of the state court in this case in effect rests upon that ground, this of itself would be sufficient to sustain the judgment against reversal in this court, except for two queries that must first be answered: (a) Is the question of state law, in this case, independent of the Federal questions? and (b) Is the decision reached upon that point sufficiently well founded to furnish adequate support for the judgment? * * *
>
> "Waiving the doubt whether, under the particular facts of this case, the question of res judicata can be regarded as independent of the Federal questions that

were raised, we are of the opinion that the decision reached upon it is so clearly ill-founded that it cannot sustain the judgment; and this for the reason that it is inconsistent with another Federal right of defendant, fundamental in character * * *."

In **Lawrence v. State Tax Commission**, 286 U. S. 276, 76 L. Ed. 1102, 52 S. Ct. 556 (1931), the Supreme Court of the United States stated the rule in the following language (l. c. 22):

"But the Constitution which guarantees rights and immunities to the citizen, likewise insures to him the privilege of having those rights and immunities judicially declared and protected when such judicial action is properly invoked. Even though the claimed constitutional protection be denied on non-Federal grounds, it is the province of this Court to inquire whether the decision of the state court rests upon a fair or substantial basis. If unsubstantial, constitutional obligations may not be thus avoided. * * *"

In **Davis v. Wechsler**, 263 U. S. 22, 68 L. Ed. 143, 44 S. Ct. 13 (1923), the Missouri courts held that by combining a plea to the jurisdiction with an answer the defendant had waived the question of venue. Such was the law in Missouri but the Supreme Court of the United States held that the constitutional issue overrode Missouri practice. The court, speaking through Justice Holmes, said (l. c. 24):

"The state courts may deal with that as they think proper in local matters, but they cannot treat it as defeating a plain assertion of Federal right. The principle is general and necessary. * * * If the Constitution and laws of the United States are to be enforced, the court cannot accept as final the decision of the state tribunal as to what are the facts alleged to give rise

to the right or to bar the assertion even upon local grounds. * * *"

In **Young v. Ragen**, 337 U. S. 235, 93 L. Ed. 1933, 69 S. Ct. 1073 (1948), this Court of the United States had this to say:

"* * * But it is not simply a question of state procedure when a state court of last resort closes the door to any consideration of a claim of denial of a Federal right and that is the effect of the denials of habeas corpus in a number of cases now before this Court. * * *"

In this case the Illinois courts have violated the foregoing pronouncements of the Supreme Court of the United States and have denied Goodyear a Federal right.

Prior to the decision in this case, the Illinois statutes set out hereinabove [**Smith-Hurd Ann. Stat.**, Ch. 120, Sec. 507, and **Smith-Hurd Ann. Stat.**, Ch. 120, Sec. 501 (2)], had been construed by Illinois courts to make only the leasehold interest of the lessee taxable and they did not make the freehold interest in property owed by the United States of America taxable to the occupant. This is illustrated by a consideration of **LaSalle Manufacturing Company v. City of Ottawa**, 16 Ill. 416 (1855), where a judgment for delinquent taxes was rendered against the lessee of certain real estate which was exempt from taxation. The judgment described the property in such terms that the taxing authorities could sell the entire lot. The court pointed out that the assessment should have been only upon the leasehold. The court said (l. c. 421):

"The terms and phraseology of this judgment are too general and too broad. The assessment was upon the leasehold estate in this lot. The judgment should have described the same estate or interest. By its

terms, however, it imports and describes the whole estate or land. For this error, the judgment will be reversed and the cause remanded, to enable the county court to correct the entry, by describing in the judgment, the true estate or interest condemned, and ordered to be sold."

Before this case was decided the Illinois courts recognized that several interests may be created in real estate and that each of those interests may be treated as real estate and taxed separately. This was especially true of a leasehold interest which is personalty—a chattel real.

In **City of Chicago v. University of Chicago**, 302 Ill. 455, 134 N. E. 723 (1922), the rule was stated as follows:

> "• • • Although by virtue of the common law a lease-hold remains a chattel real, it was within the power of the state to declare its nature contrary to the common law for the purposes of taxation. • • •"

In this case Goodyear has never conceded—much less contended—that the case was merely one of excessive valuation. On the contrary, Goodyear's consistent contention has been that it was being taxed on an interest in real estate which it did not own and an interest which was exempt from taxation.

The Illinois Supreme Court recognized the principle that Goodyear need not exhaust its statutory remedies before instituting this action if the tax was on property exempt from taxation. However, that Court fell into error and deprived Goodyear of its constitutional rights when it held that this assessment was not on property exempt from taxation. The foregoing statutes and cases show that the occupancy by Goodyear did not make the freehold interest owned by the United States of America taxable. The

court's statement that the property was exempt from taxation only in the hands of the United States Government completely overlooks the cases heretofore discussed.

CONCLUSION.

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

Charles M. Spence

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CHARLES M. SPENCE,

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Dated this 13th day of June, 1952.